

Exhibit 34

Page 1

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----)

In re)

) Chapter 11

)

LEHMAN BROTHERS) Case No.

)

HOLDINGS INC., et al.,) 08-13555 (JMP)

)

) (Jointly Administered)

Debtors.)

)

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VIDEO DEPOSITION UPON ORAL EXAMINATION
of

SIR GEORGE IACOBESCU

On Tuesday, 18th June 2013

Taken at the offices of:
Weil Gotshal & Manges LLP,
110 Fetter Lane,
London EC4A 1AY,
England

Reported by: Richard Harper

1 SIR GEORGE IACOBESCU
2 testifying here not only in your individual
3 capacity but as a representative of the claimants?

4 A. Yes.

5 Q. Okay and do you know the topics for
6 which you have been designated?

7 A. Yes.

8 Q. Okay. Let's get exhibit 1. That's
9 already been marked. We already had one
10 deposition, so we are going to be using a couple
11 of the same exhibits, again.

12 THE COURT REPORTER: Does that need
13 to be marked for him?

14 Mr. ISAKOFF: No, this one's
15 already been marked.

16 THE COURT REPORTER: Okay.

17 BY MR. ISAKOFF:

18 Q. And if you'll turn to the third
19 page, Schedule A, this is for the record, exhibit
20 1 is the notice of deposition of Canary Wharf,
21 lists a number of topics in Schedule A and you are
22 designated for the first two.

23 The first one is the lease dated
24 March 16th 2005, among Canary Wharf, LBHI, LBL and
25 others. What, if any, involvement did you have in

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2 the negotiation of that lease?

3 A. I had -- I had involvement on that
4 from the day the deal started with Lehman and --
5 but I was not involved in the daily negotiation of
6 the lease, but it followed the agreement for
7 lease.

8 Q. Can you put a time frame on that,
9 on when your involvement first started?

10 A. In 2000.

11 Q. Okay. Were you -- and topic 2 is
12 Schedule 4 to the lease including all
13 communications and negotiations. Do you know what
14 Schedule 4 to the lease is?

15 A. Yes, I do.

16 Q. And what is it?

17 A. It is the indemnity that we
18 received from LBHI.

19 Q. The guarantee?

20 A. Yes -- no, the indemnity.

21 Q. What is the difference between a
22 guarantee and an indemnity?

23 A. I'm not -- I'm not legal and I do
24 not want to pretend to have total legal
25 understanding. The guarantee -- the indemnity for

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2 MR. ISAKOFF: By the "guarantee",
3 I am referring to Schedule 4 to the lease.

4 MR. TULCHIN: Which he has referred
5 to as an indemnity, so I object to the form.

6 MR. ISAKOFF: Yeah, I would
7 appreciate it, Mr. Tulchin, from the outset, if
8 you would confine yourself to objection to form
9 and not coach the witness with respect to any
10 substance, no speaking objections, please.

11 MR. TULCHIN: Sir, I did object to
12 form and there is no coaching; there wasn't and
13 won't be.

14 MR. ISAKOFF: Thank you.

15 A. I think my involvement was to see
16 at the end of the contract when the lease was
17 drawn, to see that it confirms to our
18 instructions.

19 BY MR. ISAKOFF:

20 Q. Okay. Do you know whether there
21 were any substantive negotiations over the terms
22 of the guarantee?

23 MR. TULCHIN: Same objection.

24 A. I do not know exactly what took
25 place between the lawyers but my assumption is

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2 wider than ----

3 Q. My interest was wider; I just
4 hadn't asked you yet?

5 A. Okay. Do you want to ask me or
6 should I continue?

7 Q. You should just continue.

8 A. Okay, so in 1979, I joined Olympia
9 and York in Toronto.

10 THE COURT REPORTER: I joined,
11 sorry?

12 A. Olympia and York in 1978 and,
13 practically, I work for 35 years for the same
14 company. I was -- I started as a construction
15 manager and then I became vice president of
16 developments in Battery Park and I have done for
17 Olympia and York several projects in Boston, in
18 Houston. I was in charge of the Olympia Centre
19 and the Nieman Marcus development in Chicago and
20 then I was running about 60% of the Battery Park
21 development; namely the two Merrill Lynch
22 buildings, the central plant and the Winter
23 Garden. In 1987, we were invited by Mrs. Thatcher
24 to develop Canary Wharf and I moved to London in
25 1988 with a team of executives.

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2 just for future reference, as long as we are at
3 the beginning here, it is Mr. Isakoff.

4 MR. TULCHIN: I am sorry. I beg
5 your pardon.

6 MR. ISAKOFF: Not a problem. Pure
7 guess work on anybody's part how to pronounce it.
8 BY MR. ISAKOFF:

9 Q. To your knowledge, has Canary Wharf
10 ever made a claim on a document like exhibit 3,
11 with respect to any of its other tenancies?

12 A. I am hesitating, because the
13 general answer would be no, but it is possible
14 that about 12 years or 13 years ago, we had a
15 small tenant that went bankrupt and we might have
16 had a claim, but to the general question the
17 answer is no.

18 Q. Do you know as between Canary Wharf
19 on one hand and LBHI, which is Lehman Brothers
20 holdings Inc. on the other, who drafted what has
21 become exhibit 3?

22 A. We think it has been drafted back
23 and forth between Clifford Chance and Lehman's
24 lawyers and it's -- I know for sure that it's
25 every time there was a draft, it went to New York

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2 to LBHI's approval.

3 Q. Do you know whether there was more
4 than one draft?

5 A. No.

6 Q. Do you know who did the first
7 draft?

8 A. Simply no.

9 THE COURT REPORTER: I'm sorry?

10 A. No.

11 BY MR. ISAKOFF:

12 Q. Is it fair to say that this is a
13 Canary Wharf form, since it is similar to other
14 such documents in Canary Wharf leases?

15 A. Yes.

16 MR. TULCHIN: Wait until he
17 finishes the question, please.

18 BY MR. ISAKOFF:

19 Q. Is it fair to infer that Canary
20 Wharf and its counsel did the first draft of this
21 document for that reason?

22 A. Yes.

23 Q. Do you know whether there were any
24 substantive changes that were even sought by LBHI
25 with respect to that first draft?

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2 to ----

3 BY MR. ISAKOFF:

4 Q. The question is wasn't there some
5 interest being served for Canary Wharf in not
6 following the procedure specified in section 7(a)
7 in not serving, or attempting to serve a notice on
8 LBHI after the forfeiture was effective on
9 December 10, 2010?

10 MR. TULCHIN: Same objection.

11 A. Okay. Let's -- we are in December
12 2010. The rent that was due from LBHI was £57.5
13 million per year. The value of that rent was
14 approximately £1 billion 50, to make up in pounds
15 or in dollars?

16 BY MR. ISAKOFF:

17 Q. I can work with either one, sir.

18 A. So the value was about 1 billion
19 50. We were working toward a partial mitigation
20 of our loss by selling the building to JP Morgan,
21 which we had no guarantee. And I am very happy to
22 elaborate on that but we had no guarantee that
23 that would happen. Ultimately, we sold the
24 building for -- depends how you look at the
25 numbers -- between £450 million and £470 million.

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2 So, would it make sense for anybody to take -- to
3 have LBHI take the lease worth 1 billion 50 or
4 sell it for 470? It does not take a lot of
5 arithmetic. We would have been, I repeat We would
6 have been ecstatic if LBHI, as you know, I don't
7 know want to go much further but there was no
8 signed deal with JP Morgan. And, as you know, the
9 heads of terms or memoranda of understandings are
10 not legally binding, in any form, and 50% of the
11 cases in UK, people sign heads of terms and then
12 they walk away from the deal. If we had the
13 opportunity to preserve, because we had the
14 fiduciary duty to ourselves and to the
15 securitization. And if we could -- get LBHI to
16 take a lease, that would have been worth the 1
17 billion 50; believe me, we would have done it.

18 Q. Were there at the time -- by the
19 time of the discussions between Sullivan and
20 Cromwell, Clifford Chance and Weil Gotshal to
21 which you have referred, had there been any
22 communications, at all, between Canary Wharf and
23 JP Morgan with respect to the subject of serving a
24 notice under section 7 of the exhibit 3?

25 A. I think JP Morgan wanted to make

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2 sure that if they are to buy the building, they
3 would not be in competition with LBHI and if LBHI
4 were to take the building, that their agreement
5 would be null and void.

6 Q. My question, sir, was whether there
7 had been any discussion or communication between
8 anybody on behalf of JP Morgan, on one hand, and
9 Canary Wharf, on the other, of serving a notice
10 under section 7(a) of exhibit 3 at the time of the
11 discussions between Clifford Chance, Sullivan and
12 Cromwell and Weil Gotshal to which you've
13 referred?

14 A. Yes. JP Morgan were anxious that
15 that notice not be served ----

16 Q. And that was ----

17 A. -- in order so we can agree the
18 deal if there is a deal there.

19 Q. Okay. So at the time when you were
20 asking Weil Gotshal whether -- strike that. Is it
21 not a fact that as of December 10, 2010, when the
22 forfeiture took effect, JP Morgan had told Canary
23 Wharf not to serve the notice under section 7(a)
24 of exhibit 3?

25 A. I don't want to exaggerate the pull

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2 or the power of JP Morgan in that transaction. We
3 were guided by our self-interest. There was no
4 signed deal. There was no obligation with JP
5 Morgan either on their side or on our side; so we
6 followed what was good for the company. I repeat
7 again, if LBHI, there is absolutely no rhyme nor
8 reason in anybody, I should be fired if I would
9 give away a £1 billion deal for the sake of a JP
10 Morgan sale, and everybody that works for me. We
11 are not taking from JP Morgan. It was one of the
12 deals in waiting. They could have walked. We
13 didn't no know that there was a deal with JP
14 Morgan until December 19th. We didn't know they
15 were going to follow. We had an aborted deal with
16 building two buildings with them in Canary Wharf.
17 So they could change. They had several
18 alternatives on what to do. And there was nothing
19 that would -- I think it was very clear, they said
20 from day 1, "It is not binding we can change our
21 mind" and so did we. If we had an opportunity to
22 get an LBHI lease, that would be our Number 1
23 value, because the duty was to the securitization.
24 As you probably know, the building was in the
25 securitization.

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2 CW0010443. This is the letter that's dated
3 December 3. At the bottom of the first page,
4 there is a reference to when the right will be
5 exercised to forfeit the lease. Do you see that?

6 A. Yes.

7 Q. Does this refresh your recollection
8 that forfeiture took place on December 10, 2010?

9 A. Yes, it refreshes my memory that it
10 was signed on 3rd December and yes, that is
11 correct. That is what it says.

12 Q. So having in mind that you did not
13 yet have a signed deal with JP Morgan on December
14 10, 2010, is it, in fact, the case that it would
15 have been against Canary Wharf's interest to serve
16 LBHI under paragraph 7(a) of what we have been
17 referring to as exhibit 3, because it might have
18 interfered with the pending deal with JP Morgan?

19 A. No, I do not think so.

20 Q. Would it have interfered with the
21 deal with JP Morgan if you'd served the notice
22 under 7(a)?

23 A. If we knew that there is interest
24 from LBHI, we would have served the notice. If
25 the response from -- on our questions from LBHI

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2 was a positive response, we would have served the
3 notice, I assure you.

4 Q. Okay. Is it not, in fact, the case
5 that JP Morgan didn't want you to serve the
6 notice?

7 A. That's correct.

8 Q. And they even went so far as to
9 include that in the final deal, correct?

10 A. Correct.

11 Q. And so isn't it a fact that on
12 December 10, 2010, you had very much in mind that
13 if you had served the notice, it would have fouled
14 the deal with JP Morgan Chase?

15 MR. TULCHIN: Asked and answered.
16 Go ahead if you can.

17 A. I think I did. I'm sorry. I think
18 the answer is very clear. If LBHI wanted to take
19 the lease, we would have accepted that gladly and
20 if not, the normal logic is that a company in
21 Chapter 11 would not be able to take a lease worth
22 3 billion or more than 3 billion, close to £4
23 billion in its length and that was strengthened by
24 the fact that Sullivan and Cromwell disclosed the
25 terms of the potential deal with JP Morgan. It's

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2 probably the delta between the value of the
3 building at the time, which was over 1 billion
4 sold on the market versus a sale of 450 or 470
5 that we assumed, or in my understanding, LBHI made
6 the right judgment in saying, "We're not going to
7 take an over-rented or over-valued building at
8 this point, when we know that the market would not
9 be more than half the value of it." It would have
10 been suicidal. So, I think we followed the proper
11 procedure, but clearly in everybody's mind is that
12 we are dealing with a company in Chapter 11 and
13 would they do it? The answer as expected was no.

14 BY MR. ISAKOFF:

15 Q. So if the answer was no, why was it
16 that JP Morgan Chase, in the final deal, precluded
17 you from serving the notice?

18 A. I think it was purely their -- I am
19 saying it with all due respect -- their paranoia
20 not to have a deal that could be contested by
21 somebody else. They just wanted to have surety of
22 what they were getting.

23 Q. Did LBHI, as surety, have a right
24 to take over LBL's position on its own?

25 A. I think they had plenty of

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2 are still working on it and they're building the
3 basement. The second alternative was to refurbish
4 all the offices, and keep in mind we are in a
5 collapsing world, the world was falling down
6 around us. The other alternative was to redevelop
7 and refurbish their existing offices. The third
8 one was to look for new premises and in that
9 context I asked him "Would you be interested in
10 that building? Would you take a lease on that
11 building? After a lot of thinking they said, "We
12 would consider it. We have not made a decision.
13 We'll consider it" and as you probably know
14 optionality is the Number 1 mantra of JP Morgan.
15 They always want to have optionality. One of the
16 strengths was to purchase. They said "We'll not
17 take a lease but we'll consider a purchase. That
18 is how the discussion of the purchase of the
19 building started.

20 Q. Okay. At that time, was there any
21 default in the lease with LBL?

22 A. Yes, LBL stopped paying rent, or we
23 knew -- I cannot point exactly the days, but we
24 have been told by LBL and end of March they
25 stopped paying rent. So they defaulted on that

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2 point.

3 Q. Okay. Do you know whether the
4 discussions that you were having with JP Morgan
5 Chase concerning offering JP Morgan an interest in
6 the building or a sale of the building, whether
7 that predated the end of March?

8 A. I don't know exactly, but we knew
9 that -- can I add something to it?

10 Q. Sure.

11 A. We knew that Nomura's lease will
12 come to an end and Nomura will move out of the
13 building, because Nomura was a tenant for about
14 400,000 square feet.

15 Q. Is that 400,000 square feet?

16 A. Nomura, yes. But we knew that
17 their lease was -- we tried very, very hard to
18 make a deal with Nomura to stay there, but then we
19 realised that we were losing Nomura too, so we
20 contemplated an empty building.

21 Q. The effort to retain Nomura, did
22 you realise that that was not going to succeed
23 before or after LBL stopped paying rent at the end
24 of March 2010?

25 A. We tried -- we pretty much knew --

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2

3 (Exhibit 23 was marked for identification)

4 Q. We have marked, as exhibit 23, a
5 letter from Canary Wharf to JP Morgan Chase dated
6 5 March, 2010 Bates Stamp CW10412 to 18. Have you
7 ever seen this before, Mr. Iacobescu?

8 A. Yes, since I signed it, of course,
9 I have seen it.

10 Q. That is your signature on page 7?

11 A. Correct.

12 Q. What is this?

13 A. It's the correspondence with
14 JP Morgan where we made them available data about
15 the building on the Strand that we were pursuing
16 there for them to purchase a building.

17 Q. Does this refresh your recollection
18 that discussions concerning their interest in
19 acquiring 25 Bank street, which is the building
20 that we have been discussing that LBL was in some
21 time prior to March 5, 2010?

22 A. Correct, yes.

23 (Exhibit 24 was marked for identification)

24 Q. We have marked as exhibit 24 an
25 e-mail chain bearing Bates number CW19076 to 79.

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2 BY MR. ISAKOFF:

3 Q. I had come close enough to
4 finishing. Why don't you finish your answer?

5 A. Can you repeat the question,
6 please?

7 Q. The question is whether you revised
8 your claims as a consequence of this discussion
9 with Mr. Ehrmann concerning the cap?

10 A. Yes, we did.

11 Q. Okay. When did you do that?

12 A. We did it several times and I think
13 the last time we had a meeting with him in London,
14 some time in October. We had a meeting with him
15 in October at which we practically got to the
16 nitty-gritty of the claim. We had a claim which
17 we worked out with Daniel that came to about 407
18 million.

19 Q. Pounds or dollars?

20 A. Dollars. And then he -- I had a
21 conversation with him where he said it has to be
22 under 4. So it became just a pure negotiation and
23 we ended up with 399. We reduced it by 8 million
24 purely not to have a 4 in front of it, I don't
25 know the logic or the reason of it, but the amount

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2 was, we were very eager to come to a conclusion.

3 Q. But you never revised your claim to
4 reflect that, did you?

5 A. Yes, we did.

6 Q. So, the current total of the claims
7 on record you believe currently is 399 million?

8 A. The claim that we thought that we
9 agreed -- we agreed, not that we thought we agreed
10 -- we agreed with Daniel was 399 million and then
11 we had correspondence from Deborah Cash, who
12 worked for him, saying that it has gone to the
13 unsecure creditor committee. It has been approved
14 and now it will go to court and it will be
15 approved with within the next 3 to 10 days, but we
16 had confirmation of that claim being agreed.

17 Q. Do you know whether you had ever
18 revised the claim documents at any time from when
19 they were first filed at over \$4 billion and the
20 fall of 2010?

21 A. Your question is did we file again?

22 Q. Yes.

23 A. No, we worked to the route of the
24 person or the lawyers in charge with that.

25 Q. You don't know that your claims

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2 The second and this is probably the
3 thing that probably damaged the whole process, was
4 that it included a condition that the claim
5 against LBHI should be replicated in any
6 settlement with LBL. So that was the situation.
7 LBL did not -- can I continue?

8 Q. Sure.

9 A. LBL were enormously concerned that
10 any settlement with LBHI would flow back into them
11 as a claim, but the fact is that they had the
12 building; they had the goods. LBL said, "We're
13 not going to do a surrender or anything else
14 unless we know what the claim -- unless our claim,
15 Canary Wharf claim against LBL is zero and unless
16 we know the claim you -- the settlement that you
17 make with LBHI." And they were pretty clear in
18 saying, "We don't want to see a huge settlement
19 with LBHI but" -- and I put in brackets -- by
20 telepathy, they said, this is LBL, "We'll agree,
21 we feel very comfortable with a claim of £250
22 million", and that happened in September. And
23 I remember very well the date, because it was
24 September 30th when they abandoned the building,
25 and locked the tenants in.

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2 Q. And did what?

3 A. Locked the tenants in and out. So
4 based on that, it was just coincidental that we
5 had an agreement with Daniel Ehrmann for 399
6 million, which really translates into about £250
7 million and that's the settlement that we thought
8 we having an agreement with Alvarez and Marsal.
9 When the "stip" came, LBHI knew very well that we
10 need to make a deal with LBL to get the building
11 back but they put that condition, which
12 practically prevented us from doing the deal with
13 LBL, because we went back to LBL and LBL said
14 absolutely nothing. "It is either zero or you
15 can't get the building back." So put yourself in
16 our situation.

17 Q. So, is it your recollection that
18 the draft stipulation that included these terms
19 predated September 30th of 2010?

20 A. No, actually it post-dated. It
21 post-dated, because we got approval. The deal
22 with Daniel Ehrmann was at the beginning of
23 October. The notice that its been approved, it
24 was at the end of October.

25 Q. But by that time, LBL had already

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2 left the building and you had taken it over,
3 correct?

4 A. Not really. Not really. What
5 happened -- can I tell you?

6 Q. I am asking, because it surprises
7 me.

8 A. Yeah, well, join the club.
9 September 30th, LBL, Nomura moved out. We as a
10 sub-tenant, we had four floors occupied by Jones
11 Lang Lasalle, by your Euronext and the New York
12 Stock Exchange, so we were a sub-tenant.

13 Q. "We" Canary Wharf?

14 A. Yes, we, Canary Wharf were a
15 sub-tenant and we had four floors occupied. On
16 30th September -- and I remember very well that
17 date because we thought that we were losing or
18 mind -- they decided to, when Lehman -- sorry,
19 when Nomura vacated the building, they decided to
20 fire every single person in the building,
21 including the mechanical people, the elevator
22 people and worse than anything, the fire alarm
23 people. So, they fired everybody and they
24 padlocked the building.

25 Q. When you say "they", who are you

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2 referring to?

3 A. LBL.

4 Q. Not LBHI?

5 A. No. No, no. They were clean -- so
6 LBL, these are strong-arm tactics. They padlocked
7 the building and they said "That's it". Ans we
8 -- there was a flurry of arguments and e-mails and
9 they said, "You want the building, do a surrender,
10 otherwise you don't get the building back." We
11 said, "What? You cannot damage enormous value
12 even if it's -- the building, it's empty, the VP
13 value of the building, you're wall-to-wall to
14 Morgan Stanley. You are wall-to-wall to the next
15 building. You do enormous damage if the building
16 is left with no fire alarm. What happens if there
17 is a fire overnight?" And they said, "So be it".
18 We called the insurance and the insurance said,
19 "We will discontinue the insurance on the building
20 if there is no maintenance. What happens if there
21 is a fire and what happens if the fire propagates
22 on the other buildings in Canary Wharf." "We
23 don't care." So that was -- at that point we, at
24 10 o'clock at night and between 10 o'clock and
25 midnight, ultimately, what we asked them is to

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2 allow us, we backed begged to be left -- to be let
3 inside our own building, to allow us as a
4 sub-tenant to go and maintain the building in
5 order to preserve the life safety and not to
6 destroy the value of the building and that's what
7 happened. That's the time when we agreed,
8 I agreed with LBL that our claim against -- in our
9 mind LBL and LBHI were not linked at all, but they
10 created the linkage. LBL said, "You have to claim
11 against us zero, in order to get your building
12 back and you're comfortable with a 250 million
13 claim against LBHI. We don't want more, because
14 we know all these claims are coming back to us."

15 THE VIDEOGRAPHER: Sorry, I was just
16 going to say there is five minutes of tape.

17 BY MR. ISAKOFF:

18 Q. Okay. Well, let's finish off this.
19 Thank you. So you agreed --

20 A. So ----

21 Q. Let me ask the question. So you
22 agreed with their request that there be only a
23 zero claim against LBL on September 30th as a
24 condition for getting back in the building?

25 A. Correct.

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2 Q. We have marked as exhibit 28 an
3 e-mail chain Bates stamped CW 480 to 83. It
4 starts at the bottom of page 482, with an e-mail
5 from Sarah Dawson to Katie Bradford dated
6 September 20, 2010. Do you see that,
7 Mr. Iacobescu?

8 A. Yes.

9 Q. Who is Katie Bradford, if you know?

10 A. She was one of the lawyers and
11 I assume she was one of the litigation lawyers at
12 Linklaters representing LBL.

13 Q. And Sarah Dawson was at Clifford
14 Chance representing Canary Wharf?

15 A. Correct.

16 Q. There is -- in her second paragraph
17 she says: "We understand that our clients have
18 been assured by Mike Jervis that any surrender
19 would be structured in such a way as to preserve
20 our client's claims against the US guarantor."
21 Do you see that?

22 A. Yes.

23 Q. Do you know what that reference is?

24 A. That reference is to discussions
25 that we had with Mike Jervis where we made it

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2 clear that LBHI claim and LBL claims are totally
3 separate things, and it refers again to the
4 interlinking of between LBL and LBHI, where LBL
5 were concerned that a big settlement with LBHI
6 would flow back to them as a claim and the
7 discussion was -- that's why he came later on and
8 he said that he would agree, he would be
9 comfortable with the 50 million claim.

10 Q. She goes on to say: "This is not
11 reflected in the draft agreement that has been
12 provided..." Do you understand what it was about
13 the draft agreement that we just looked at that
14 did not reflect what you had been assured by
15 Mike Jarvis?

16 A. That they would accept -- they
17 would also take a 250 million claim on their -- on
18 the LBL side.

19 Q. Who said that?

20 A. This was our understanding that the
21 settlement, the surrender will reflect the claim
22 with LBHI.

23 Q. Do you recall being specifically
24 told by anybody at LBL that it would accept a
25 claim of in the range of 250 million?

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2 A. Okay. Because what happened is
3 that the way it turned out, but I inversed the
4 times here, I inversed the times. Because the
5 problem at that time was that we didn't have the
6 claim settled with Daniel Ehrmann, and that is the
7 trouble that he has mentioned here. Then we had
8 the agreement with LBHI which, that is what
9 I mentioned, they had the leverage in saying, "You
10 have to agree the same, to have the same
11 settlement with LBL" and LBL in turn used their
12 leverage in having the building by saying, "We are
13 not going to agree to anything". So that is why
14 indirectly I am saying we got caught in the
15 crossfire between what the internal side arguments
16 between the two parties.

17 MR. ISAKOFF: I would just like to
18 record to reflect that one of my London colleagues
19 has entered the room to observe.

20 MR. TULCHIN: Good afternoon.

21 A SPEAKER: Hi, good afternoon.

22 BY MR. ISAKOFF:

23 Q. The next paragraph, he says, Mike
24 Jervis says to you: "Further, you wish to press
25 on with a claim against LBHI (which they may seek

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2 two tier building, a building where the main
3 tenant has practically all the -- call it all the
4 juice of the building and all the others would
5 become second class citizens. That is why we were
6 so eager to know we have a 30 year lease and that,
7 come hell or high water, the rent will flow for 30
8 years, because we knew that that is not a building
9 that then you can chop in pieces.

10 Q. Okay. So at this point, in October
11 2010, where LBL has abandoned the building and so
12 forth, were you saying here that the fact that
13 there were no potential tenants for the entire
14 building a disadvantage, as compared with selling
15 the building as a whole?

16 A. Correct. It was -- JP Morgan was
17 the only potential customer, call it, not tenant
18 but buyer in the market that would take that kind
19 of building and since -- if I can add, since,
20 there was not a single deal of that size in the
21 whole of London and there is not a single
22 1 million square feet building in London, except
23 five or six in Canary Wharf, so that gives you --
24 this is not New York, it gives you the sizing of
25 the tenancy and customising of the buildings.

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2 A. Absolutely not. We went back and
3 we put it in based on the stip from LBHI, at which
4 point LBL said, "Absolutely not, you want the
5 asset, it is zero", so that is the conundrum for
6 us.

7 Q. When you tendered this, when you,
8 meaning Canary Wharf, tendered this to LBL you
9 knew that it was unacceptable, correct?

10 A. Not 100%. Not 100%, because they
11 said that they are comfortable with a claim of
12 250 million. But then we thought that if they are
13 comfortable with a claim for 250 million against
14 LBHI they will be comfortable with a repeat of the
15 same claim in that document and obviously they
16 said, "No, absolutely not".

17 Q. But you knew at the time -- you,
18 Canary Wharf, knew at the time that this draft was
19 sent to LBL and its administrators for its
20 consideration, that this was not likely to be
21 accepted by LBL, correct?

22 A. It was not likely but we figured
23 that for the sake of achieving the settlement they
24 would agree to it. Obviously which they did not,
25 and we have done that as a result of the LBHI

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2 REDIRECT BY MR. TULCHIN

3 By MR. TULCHIN:

4 Q. Mr. Iacobescu, I am going to have a
5 few questions.

6 A. Yes.

7 Q. Going back to the time when the
8 lease was entered into, the lease with LBL, what
9 did you understand, as the CEO of Canary Wharf,
10 that LBHI had agreed to do in connection with the
11 obligations of LBL in the lease?

12 MR. ISAKOFF: Objection. Calls for
13 legal conclusion.

14 BY MR. TULCHIN:

15 Q. You can go ahead and answer.

16 A. What I asked from day one, from the
17 first day that we started negotiating the deal
18 with Jeremy Isaac, who is the chief executive of
19 LBL, Frank Bartolotta, who was LBHI, and Mark
20 Marcucci, who is the global head of real estate,
21 is that we should have an absolute solid
22 guarantee, come hell or high water, that the rent
23 will flow over the next 30 years and, as a matter
24 of fact, we always thought that we are dealing
25 with LBHI. We needed -- we always asked for the

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2 top company, as I mentioned to Mr. Isakoff. We
3 always asked for the top company in any
4 transaction that we do. We have done the same
5 thing with Credit Suisse, or Morgan Stanley, or
6 CitiGroup, except the world headquarters of banks
7 like Barclays, where the parent company is on the
8 lease, but we always ask for an indemnity, because
9 the need is to have an uninterrupted cash flow
10 regardless of anything that goes wrong with the
11 tenant.

12 Q. I am sorry, with whom? You said,
13 "Regardless of anything that goes wrong with..."

14 A. With the tenant.

15 Q. Okay. I didn't hear you.

16 A. We were aware of the Lehmans
17 problems in 1998 with the Asian crisis, with the
18 Russian crisis, so we were a little bit
19 circumspect but it was a very, very good tenant,
20 exceptionally good tenant, and we would not have
21 entered into any, any lease agreement unless we
22 had the parent company indemnity, that they would
23 come through with. And, by the way, I do not
24 recall at any point when anybody in LBHI, be it
25 LBL or LBHI have objected to the meaning of what

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2 we asked for, of the indemnity.

3 Q. And you understand when the deal
4 was done that you had obtained what you were
5 seeking?

6 MR. ISAKOFF: Objection. Leading
7 and calls for a legal conclusion.

8 A. My understanding is that this is
9 what we asked, this is what we got and, as an
10 additional thing, one of the reasons that we were
11 very strict on this requirements is that because
12 the building also had to be in the securitization,
13 and a 30 years lease in the securitization, when
14 we put Lehman in the securitization, the income
15 from Lehman was matched against bonds that would
16 expire in 2033, so we would not match bonds with
17 something that we didn't think was rock solid.

18 BY MR. TULCHIN:

19 Q. I want to ask you, Mr. Iacobescu
20 please, to cast your attention to September 30th
21 2010 and you recall giving some testimony about
22 the events of that day?

23 A. Yes.

24 Q. Okay. What consequences would
25 there be, as far as you understood, for the

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2 tenants, including Jones Lang Lasalle and New York
3 Stock Exchange Euronext, if the building had been
4 padlocked?

5 A. I -- you know, to measure my words,
6 these were strong arm tactics used by the
7 administrators to force us into a surrender.

8 I mean, this is -- I never heard of anything like
9 that, I have never seen anything done to take --
10 shut down a building, shut down all the services,
11 with 100,000 square feet of tenants in the
12 building. 100,000 square feet of tenants
13 translates, if you look at the density of about
14 120, 125 square feet per person you are talking
15 about 800 people. 800 people is a train, that is
16 a full train of people. And to have them shut
17 down in the building with no services, with no
18 fire alarm, it is totally, totally -- it is beyond
19 belief. This is not -- it is irresponsible for
20 anybody to do that. Nevertheless, with the nicest
21 words, this is what LBL has done, in trying to
22 force us, when we made an offer to take over the
23 maintenance of the building as a sub-tenant, not
24 as the landlord, because we did not have a right
25 at that point, the building was not ours. So we

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2 were extremely concerned. We called the press, it
3 didn't appear in the press because by midnight
4 there was a kind of agreement. We called the
5 insurance company and the effect of something like
6 that would have been catastrophic. You do not
7 necessarily expect things to happen, but it is
8 irresponsible when you are not only the landlord,
9 the ultimate landlord, but you manage the whole
10 estate, an the estate with 100,000 people, to let
11 a building, you know, at the risk of being damaged
12 or under fire, plus the fact that, you know, you
13 have padlocked tenants in and out of the building
14 at will.

15 Q. You testified earlier, if I recall
16 correctly, that at one point on that day you sent
17 security guards to 25 Bank Street; is that right?

18 A. Yes. At between 9 o'clock and
19 11 o'clock we surrounded the building with
20 security, with our security guards, to make sure
21 that the building is protected.

22 Q. Was it your understanding that in
23 that time period there were still employees of
24 tenants who were present in the building?

25 A. Yes.

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2 Q. To your understanding, did your
3 security guards enter the building that night?

4 A. No, they guarded the doors. They
5 did not enter the building because it wasn't our
6 building.

7 Q. Can I ask you to please see if you
8 can find exhibit 32 in the pile of exhibits in
9 front of you. It is down the stack a little ways?

10 MR. ISAKOFF: Can you give us the
11 date?

12 MR. TULCHIN: If you let me find
13 it.

14 MR. ISAKOFF: Okay, I will let you
15 find it.

16 A. I have it.

17 MR. ISAKOFF: Maybe you can give us
18 the date.

19 BY MR. TULCHIN:

20 Q. On the first page of exhibit 32
21 there are some e-mails dated 30th September 2010.
22 Do you see that?

23 A. Yes.

24 MR. ISAKOFF: Can you give me a
25 chance to get to it, now that I know what I am

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2 looking for. Okay. I am with you.

3 BY MR. TULCHIN:

4 Q. Do you recall being asked some
5 questions on direct examination about your e-mail
6 that appears in the middle of the page, roughly,
7 of the first page of exhibit 32?

8 A. Yes.

9 Q. Was your agreement with Mike Jarvis
10 conditioned upon anything?

11 A. Well, everything that you see here
12 is a condition on the surrender taking place and
13 the surrender -- and on our agreement with LBHI.

14 Q. Did you tell him that in your
15 e-mail?

16 A. This is ----

17 MR. ISAKOFF: Objection, leading.

18 A. Sorry. Should I answer?

19 BY MR. TULCHIN:

20 Q. You can answer.

21 A. It is all subject to the surrender,
22 to a satisfactory surrender taking place.

23 Q. Could you read into the record,
24 sir, your sentence in your e-mail which makes that
25 clear, the same e-mail?

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2 A. It says very clear that: "All
3 these points ... will become effective on
4 completion of surrender."

5 Q. Now, Mr. Iacobescu, a couple of
6 questions if I may, about the economics of what
7 happened in 2010. There came a point when LBL
8 stopped paying rent; is that right?

9 A. Correct.

10 Q. What is your recollection as to
11 when that was?

12 A. End of March 2010.

13 Q. As of that time, roughly speaking,
14 how many years were left on the LBL lease?

15 A. 23 years.

16 Q. What was LBL's total obligation to
17 pay rent and other charges for the duration, the
18 unexpired portion of the lease?

19 MR. ISAKOFF: Object to form.

20 BY MR. TULCHIN:

21 Q. Approximately?

22 MR. ISAKOFF: The same objection.

23 A. I cannot do the calculation
24 mentally, because it is all a matter of the rate
25 of discount, but the value of if building in 2010

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2 changed from £40 to £10 I would be the first one
3 to be told.

4 Q. What you know is that your lawyers
5 drafted what became Schedule 4 of the lease and
6 that that was tendered to Lehman, correct?

7 A. Yes.

8 Q. And you do not know whether there
9 were any discussions or issues pertaining to it,
10 but that Lehman agreed to the what is written in
11 the lease?

12 A. So far as -- yes. And I don't know
13 if that and adds anything to the argument, but we
14 were told in one of the meetings, when executives
15 from LBHI came to London, that they regarded the
16 lease as a capital lease, which means that it was
17 in their book, as opposed to an operating lease.

18 Q. You were asked about the events of
19 September 30th, about the strong arm tactics that
20 you attribute to LBL. You are not attributing
21 anything of what you are complaining about there
22 to LBHI, are you?

23 A. Not at all. I think it is, to add
24 to that, it is pretty clear to me that LBL were
25 following their own interest.